United States Department of Agriculture,

OFFICE OF THE SECRETARY.

BEFORE THE HONORABLE THE ATTORNEY GENERAL OF THE UNITED STATES

IN RE

LARD SUBSTITUTE, COMPOSED OF 80 PER CENT OF VEGETABLE OILS AND 20 PER CENT OF IMPORTED OLEO STEARIN, UNDER THE MEAT-INSPECTION LAW.

QUESTION SUBMITTED BY THE SECRETARY OF AGRICULTURE.

BRIEF OF THE SOLICITOR.

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DOES THE MEAT INSPECTION AMENDMENT (ACT OF JUNE 30, 1906; 34 STAT., 674) PROHIBIT THE TRANSPORTATION IN INTERSTATE COMMERCE OF LARD SUBSTITUTE, A COMPOUND OF VEGETABLE OILS AND OF A DEFINITE AND CONSIDERABLE QUANTITY OF IMPORTED OLEO STEARIN, USUALLY IN THE PROPORTION OF 80 PER CENT OF THE FORMER AND 20 PER CENT OF THE LATTER?

The opinion of the Attorney General on this question is requested by the Secretary of Agriculture, under authority of section 356, Revised Statutes; the brief of the Solicitor of the Department is submitted in accordance with the direction of the Attorney General.

STATEMENT OF THE CASE.

THE FACTS.

Lard substitute is made on a large scale by many manufacturers in the United States, including the meat packers. It is composed of about 80 per cent of vegetable oil and 20 per cent of oleo stearin—either foreign or domestic—an animal fat derived from cattle and sheep. Oleo stearin is never sold to the consumer as such, but is a food manufacturer's product and is always mixed with some other fat, either animal or vegetable, before being sold to the consumer. Lard substitute is used for human food, and is a frying and shortening compound of fats, intended, as the name implies, to take the place of lard.

The G. H. Hammond Company, of Chicago, is a corporation engaged in slaughtering live stock and preparing their carcasses for food, and in shipping the same in interstate commerce; inspection is maintained at its establishment under the meat-inspection amendment (act of June 30, 1906; 34 Stat., 674). This firm has represented to the Secretary of Agriculture that the meat-inspection amendment requires the inspection, examination, and marking of imported meat food products, which have been mixed with vegetable oils in this country, before they may be shipped in interstate commerce. No meat or meat food product, to which the act is applicable, may be shipped in interstate commerce unless it has been marked as required in the statute; the

mark of inspection is affixed only when the animals from which the meat and meat food products are derived have been inspected by a department inspector at the time of slaughter; such inspection is the only inspection provided in the act. It is obvious that imported meat food products can not satisfy these requirements, and, consequently, if the construction of the statute contended for by the petitioner be adopted, lard substitute prepared in this country in part from imported oleo stearin, will be excluded from interstate commerce. In the administration of the act, the Department has been guided by the opinion of the Attorney General (26 Op. Atty. Gen., 50), and has never attempted to exercise jurisdiction over imported meat food products thereunder. It has required domestic oleo stearin, constituting in part lard substitute by admixture with vegetable oils, to be inspected and marked as required in the act. The Hammond Company represent that the enforcement of the statute in this way has resulted in a definite hardship, by requiring the firm to sell lard substitute, composed in part of domestic oleo stearin and prepared according to the regulations of the Department, in competition with lard substitute composed in part of imported oleo stearin, which has not been subjected to the same restrictions.

THE LAW.

The meat-inspection amendment, approved June 30, 1906 (34 Stat., 674), will be found reprinted in the brief of the petitioner (pp. 19 to 31).

POSITION TAKEN.

In this brief we will assert: (1) The contention that the meat-inspection amendment prohibits the interstate transportation of imported oleo stearin, a constituent of lard substitute, leads to an absurd result. (2) The opinion of the Attorney General (26 Op. Atty. Gen., 50) is directly applicable to the question at issue.

ARGUMENT.

I. THE CONTENTION THAT THE MEAT-INSPECTION AMENDMENT PROHIBITS THE INTERSTATE TRANSPORTATION OF IMPORTED OLEO STEARIN, A CONSTITUENT OF LARD SUBSTITUTE, LEADS TO AN ABSURD RESULT.

The restrictions of the meat-inspection amendment apply in terms to interstate and foreign commerce in meat and meat food products; no reference is made in the statute to imports of such products. Counsel contend that the statute applies to imported meat food products in interstate commerce. (Brief, pages 17 and 18.) If they are right in this, it follows that commerce in imported meat food products would be confined by the act to the State in which the port of entry is situated, which would amount in effect to a prohibition upon the importation of oleo stearin. Commerce has been declared to be one of the most important subjects of legislation, and an intent to promote and facilitate it and not to destroy it is to be presumed. (*Texas & Pacific Ry.* v. *Interstate Commerce Commission*, 162 U. S., 197, 218, 219.) The legislative intent in the meat-inspection amendment, as pointed out by the Attorney General (26 Op.

Atty. Gen., 50, 56), is to be gathered from another statute, the food and drugs act (act of June 30, 1906; 34 Stat., 768), passed on the same day; these two statutes form part of a general scheme of food legislation, and should be construed together. (*People* v. *Jackson*, 30 Cal., 427, 430.) Under the food and drugs act the interstate transportation of imported meat and meat food products, not within any of its prohibitions, was plainly contemplated by Congress; can it be said, then, that Congress intended to prohibit the interstate transportation of imported meat food products in the meat-inspection amendment? The law does not favor the construction of an act of the legislature as conferring or recognizing a right, and, in the same breath, as destroying the right or rendering it useless or ineffective. The classical case illustrating the principle is that given by Lord Coke, where a statute vests a manor in the King, saving the rights of all parties, or vests in him the manor of A, saving the rights of A; the saving clause was rejected in this case, he says, because otherwise the enactment would have been in vain. (1 Co. Litt., 70.) Modern illustrations of this principle are numerous. In *Bennett* v. *Hunter* (9 Wall., 326, 335) the question was whether the land tax act of 1862 worked an absolute transfer to the United States of land upon which the tax had not been paid; the court held that failure to pay the tax merely created a lien upon the property, and that it would be unreasonable to construe the statute as defeating the right of the owner to pay the amount assessed, and relieve the lands from the lien.

By taxing the property Congress in effect recognized the right of the owner to hold and enjoy it, upon the payment of the tax; to construe the statute as divesting the owner of title, upon failure to pay the tax, would have nullified a previous recognition of the owner's rights. To the same effect is *Beals* v. *Hale* (4 How., 36), where the Supreme Court harmonized the apparently conflicting provisions of two acts of the Legislature of Michigan, passed on the same day, respecting the registration of mortgages, notwithstanding the argument of counsel on both sides that the two acts were inconsistent. In *Schollenberger* v. *Pennsylvania* (171 U. S., 1, 19) it was held that by taxing oleomargarine Congress had recognized it as an article of commerce, and that a State would not be permitted to exclude from introduction within its borders all oleomargarine for the purpose of preventing the entry of the compounded or adulterated article. Congress has, of course, recognized imported meat food products as dutiable, and consequently, thus far, as legitimate articles of commerce, in section 286 of the tariff act of August 5, 1909 (36 Stat., 39).

II. THE OPINION OF THE ATTORNEY GENERAL (26 OP. ATTY. GEN., 50) IS DIRECTLY APPLICABLE TO THE QUESTION AT ISSUE.

The central point in the discussion is the correct interpretation to be placed upon the opinion of the Attorney General. This opinion is the only authoritative ruling thus far made on the general question; the substance of it, as given in the official syllabus,

is that "The prohibition upon transportation contained in the meat inspection amendment to the agricultural appropriation act of June 30, 1906 (34 Stat., 676), does not apply to meat and meat food products imported from foreign countries." (26 Op. Atty. Gen., 50.) It is not open to question that the meat-inspection amendment does not cover vegetable substances. It is difficult to see, therefore, how the simple fact of admixture can operate to make a compound subject to inspection, when neither of the two ingredients thereof is required to be inspected. Counsel realize that this opinion, prima facie at least, restricts the scope of the act to domestic meat and meat food products, and the briefs filed are largely confined to an effort to distinguish the opinion. Stripped of argumentative features, the position of the petitioner in this connection appears to be as follows:

> 1. The Attorney General was considering only paragraph 8; the interstate transportation of lard substitute, composed in part of imported oleo stearin, is prohibited by paragraph 17. (Brief, p. 7.)
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> 2. The Attorney General held, in effect, that imported meat food products were not subject to the act so long as their identity as imports was retained. (Reply brief, p. 2, et seq.) Upon admixture with vegetable oils in this country, imported oleo stearin loses its character as an import, and thereupon becomes subject to the meat inspection law, to the same extent as a domestic meat food product. (Brief, p. 14.)

It is true that the Attorney General was discussing the prohibition on transportation in paragraph 8 of the statute, yet there is ample avidence that the statute as a whole was under consideration in connection with its application to imported meat food products, as the following excerpts from the opinion will show:

> In determining the meaning of the provision in question, reference must be had to the amendment in its entirety * * * (26 Op. Atty. Gen., 51.)
>
> Considering the amendment as a whole in the light of such circumstances, I fail to perceive any support whatever for the suggestion that Congress intended thereby to prohibit the interstate or foreign transportation of meat and meat food products imported from foreign countries. (26 Op. Atty. Gen., 51.)
>
> But there is not in the entire amendment any reference to meat or meat products imported from foreign countries. (26 Op. Atty. Gen., 55.)

It is inconceivable that the Attorney General should be of opinion that paragraph 8 had no application to imported meat food products, but that paragraph 17 prohibited the interstate transportation of such products, and yet say no word upon the subject in the entire course of his opinion, particularly when he states that he is considering the amendment as a whole.

In attempting to distinguish the opinion, counsel argue that by the admixture of imported oleo

stearin with vegetable oils in this country, its character as an import is lost, and the "resultant product becomes subject to all of the laws of the country properly applicable thereto" (reply brief, p. 6), among which, of course, counsel argue that the meat inspection amendment is one. They assert, in effect, that the consumer is not fully protected unless all meat food products in interstate commerce, not in the original package, are required to be inspected and marked as provided in the act. The proposed limitation upon the scope of the opinion of the Attorney General can not be justified by anything expressed therein, and it is inconceivable that the Attorney General should have left to implication his advice upon such an important branch of the general question. The fact that an imported meat food product is of foreign origin is not changed by the admixture of such product with vegetable oils in this country, and, when the opinion is carefully read, it is clear that it is the character of the imported oleo stearin as a foreign product, and not its condition as an import, which exempts it from the operation of the statute. The fundamental error of counsel in this connection consists in the failure to take into consideration the food and drugs act, a statute in pari materia. Under this act all imported meat food products are subject to inspection at port of entry, and must be accompanied by a certificate of inspection from officials of the country of origin; the animals producing domestic meat food products are, of course, inspected at time of slaughter by department

inspectors, as provided in the meat inspection amendment. This harmonious administration of the two statutes amply protects the consumer; it is difficult to see how the consumer would be better off if foreign meat food products were excluded from interstate commerce. It is not claimed that such products are unwholesome or unfit for food. A foreign meat food product may, however, be deprived of its exemption from the operation of the statute by admixture with a domestic meat food product; such a contingency has been foreseen, and in Food Inspection Decision No. 73, issued in connection with the enforcement of the food and drugs act, it is declared that the shipment in interstate commerce of such a compound will be regarded as a violation of law.

As stated, the enactment of the food and drugs act, which was passed on the same day as the meat-inspection amendment, is proof that Congress was not without concern to protect the consumer in the case of imported meat food products. In point of fact, under section 11 of the food and drugs act the Secretary of Agriculture requires imported meat and meat food products to be accompanied by the certificate of an official inspector of the country, district, and city in which the meat is prepared. This certificate must specify that the animals from which the meat food product is derived were inspected before and after slaughter and found to be in a healthy condition. (See Food Inspection Decision No. 74.) An inspection at port of entry as to the condition of shipments of such products, even though

they are accompanied by the certificate described, is also made in order to determine whether the meat food product is unfit, in any respect, for food.

Considerations affecting the market for oleo stearin, whether imported or domestic, must of course be left wholly to the petitioner. Nevertheless it would appear that sufficient importance has not been attached to the presence of the mark of Government inspection on lard substitute, into the composition of which domestic oleo stearin enters. Being advised by the label as to which is the inspected and which is the uninspected product, the consumer can take his choice, and, while the port inspection under the food and drugs act insures that imported oleo stearin will not be unfit for food, the inspected product would naturally, it seems, be preferred.

Respectfully submitted.

GEO. P. MCCABE,
Solicitor.

H. J. FEGAN,
Assistant to the Solicitor.

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